

A waiver of penalty request may be submitted to the Reasonable Cause Review Unit. See 35 Ill. Adm. Code 700.300. (This is a GIL).

February 29, 2000

Dear Xxxxx:

This letter is in response to your letter dated January 10, 2000. The nature of your letter and the information you have provided require that we respond with a General Information Letter, which is designed to provide general information, is not a statement of Department policy and is not binding on the Department. See 2 Ill. Adm. Code 1200.120(b) and (c), enclosed.

In your letter, you have stated and made inquiry as follows:

We are writing on behalf of our client, COMPANY with the identity number #####. Please be advised it was not clear from your taxpayer service guide which would be the proper location to send this request to, so we sent it to both.

The issue at hand is the August, 1999 sales tax. The sales tax payment was prepared and sent timely. Unfortunately, the taxpayer used a stamp that had the letter on it after rates are raised by the post office and before new stamps could be printed instead of the amount. This particular stamp was \$.01 short and the Illinois Department of Revenue sent it back. The forms were immediately sent back and the taxpayer was charged an \$1100 penalty for being one day late. The taxpayer has spent considerable effort to resolve this and was told the penalty could not be reversed because he didn't have a clean record for 2 years – only 1 year and 11 months.

I remember when I studied law, I recall a long time ago our Supreme Court of the United States stated our federal system is based upon 'justice with mercy'. If ever I have seen the antithesis of that statement of the very foundation of our system of compliance, this is it. The payment was made available to the Illinois Department of Revenue but there was an honest error made by the taxpayer. The Illinois Department of Revenue made a choice to refuse the payment due to that \$.01 error. At that time, the issue of penalties should have been wiped clean from the equation. Maybe interest should be considered if the taxpayer did not respond immediately, but he did. To charge a taxpayer \$1100 for a \$.01 honest mistake and then to have that compounded by the state not accepting the payment when it was sent timely, goes beyond all definitions of punitive and harsh. We have heard repeatedly that penalties are to encourage compliance and are not punitive in nature. This belies your claim. When we attempted to find out what happened 2 years ago less 1 month, nobody could tell us and we find no records of any problem.

We hereby request the assessment of the penalty for the late filing be abated.

We understand that the Department has resolved the issues set forth in your letter and has canceled the assessment issued to your client. See attached letter. We apologize for the incorrect information you initially received from the Department.

Generally, a waiver of penalty may be accomplished in two ways. The first is to submit a waiver request to the Reasonable Cause Review Unit. Taxpayers submitting such a request must provide proof that they had reasonable cause for not timely paying their tax liability. See 35 Ill. Adm. Code 700.300 enclosed. The second option is to submit a petition for abatement of penalty to the Board of Appeals. The Board of Appeals will make a recommendation to the Director of Revenue who will then issue an order to either waive the penalty or allow it to stand. See 35 Ill. Adm. Code 210.101 et seq.

I hope this information is helpful. The Department of Revenue maintains a Web site, which can be accessed at www.revenue.state.il.us. If you have further questions related to the Illinois sales tax laws, please contact the Department's Taxpayer Information Division at (217) 782-3336.

If you are not under audit and you wish to obtain a binding Private Letter Ruling regarding your factual situation, please submit all of the information set out in items 1 through 8 of the enclosed copy of Section 1200.110(b).

Very truly yours,

Melanie A. Jarvis
Associate Counsel

MAJ:msk
Enc.